

Message Text

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TO AMCONSUL STUTTGART PRIORITY

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E.O. 11652: N/A

TAGS: CGEN: (MEMOREX V. IBM)

SUBJECT: DEPOSITION IN ABOVE CASE

REF: (A) STUTTGART 1237; (B) STUTTGART 1239; (C)
PRICE-BOYLAN TELCON, 11/13

1. DEPARTMENT OFFICER (BOYLAN) DISCUSSED CASE WITH MR. H. EUGENE DOUGLAS, DIRECTOR OF MEMOREX CORP.'S OFFICE OF INTL. TRADE AND GOVT. AFFAIRS. DOUGLAS, WHO WAS EN ROUTE TO STUTTGART, WISHED TO GO OVER ANY PROBLEMS WHICH MIGHT BE ENCOUNTERED IN CONNECTION WITH DEPOSITION. DEPTOFF BRIEFED DOUGLAS ON CONTENTS OF REFTELS, PROVIDED HIM WITH COPY OF REF (B), AND OPINED THAT CONSENT OF HERR KARTTE MAY BE SOLUTION TO ANY DIFFICULTY ARISING FROM FRG SENSITIVITY OVER SOVEREIGNTY QUESTION.

2. WITH RESPECT TO POINTS RAISED IN REF (A), FOLLOWING (PREPARED BEFORE RECEIPT OF REF (B) MAY BE HELPFUL: A. WITH REGARD TO THE SOVEREIGNTY ISSUE, DEPARTMENT UNDERSTANDS THAT IF DISCOVERY IS CONDUCTED ON CONSULAR PREMISES, THE ISSUE IS AVOIDED. ALTERNATIVE METHODS OF CIRCUMVENTING THE PROBLEM ARE (1) ISSUANCE BY THE CALIFORNIA COURT OF LETTERS ROGATORY REQUESTING THE COURTS OF BADWURTTEMBERG
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TO PERMIT DISCOVERY ON DEFENDANT'S PREMISES, AND (2) ATTENDANCE BY CONOFF AT DISCOVERY IN BOEBLINGEN. AS REPORTED IN TELCON WITH CONOFF PRICE, JUSTICE DEPT. CONSIDERS FIRST ALTERNATIVE IMPRACTICAL IN LIGHT OF TIME REQUIRED TO PREPARE LETTERS ROGATORY, HAVE THEM TRANSLATED, FORWARDED TO CONGEN, PRESENTED TO LANDESGERICHT, AND ACTED UPON. SECOND ALTERNATIVE CLEARLY NOT FEASIBLE BECAUSE OF POST'S MANPOWER LIMITATIONS AND TIME INVOLVED (SEVERAL DAYS). DEPARTMENT THEREFORE CONCURS WITH CONOFF CONCLUSION THAT PARTIES SHOULD CONDUCT DISCOVERY AT CONGEN IF THEY WISH TO AVOID CONFRONTING SOVEREIGNTY QUESTION AND POSSIBLY ATTENDANT CRIMINAL SANCTIONS (WHICH FIRST LED IBM TO REQUEST ISSUANCE OF COMMISSION). DEPARTMENT APPRECIATES LOGISTIC DIFFICULTIES WHICH THIS WILL INVOLVE, BUT CALCULATES THAT 700,000 DOCUMENTS AT 3,000 PER CUBIC FOOT SHOULD NOT TAKE MORE THAN 10 CUBIC YARDS (270 CU FT). ONE ROOM SHOULD SUFFICE. DEPARTMENT CONSIDERS THAT DOCUMENTS NEED NOT BE COPIED AT CONGEN OR UNDER SUPERVISION OF CONOFF SINCE NO INVASION OF SOVEREIGNTY IS INVOLVED IN MAKING PHOTOCOPIES.

B. WITH RESPECT TO QUESTION OF AVAILABILITY OF PERSONNEL, DEPARTMENT BELIVES THAT INVOLVEMENT OF CONOFF IN OVER-SEEING DISCOVERY CAN BE KEPT TO A MINIMUM IF PARTIES COOPERATE. MOREOVER, COMMISSION AUTHORIZES CONOFF TO NAME SUBSTITUTE IF NECESSARY. GIVEN THESE FACTS, DEPARTMENT- IS HOPEFUL THAT CONGEN CAN CONTINUE TO DISCHARGE ITS DUTIES WHILE DISCOVERY IS TAKING PLACE. DEPARTMENT APPRECIATES THE ADDITIONAL STRAIN THIS WILL PUT ON THE POST'S RESOURCES BUT AT PRESENT, THERE IS NO RELIEF IN SIGHT.

C. CONGEN AUTHORIZED TO COLLECT ADVANCE DEPOSIT OF DOLS 100 (ONE HUNDRED) FOR EACH DAY THAT CONSULAR PREMISES WILL BE USED TO CONDUCT DISCOVERY UNDER SUPERVISION OF CONOFF.

D. DEPARTMENT UNCLEAR AS WHAT ACTION CONSULATE GENERAL IS ASKING ABOUT. PLEASE RESTATE QUESTION.
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E. ATTORNEYS FOR PLAINTIFF ADVISE THAT COMMISSION WAS FORWARDED BY INTERNATIONAL AIR MAIL, AND SHOULD ARRIVE AT CONGEN BY 11/17 AT LATEST.

2. HISTORICAL NOTE: IN 1921 THE CONSUL GENERAL AT COPENHAGEN SPENT ALL OR PART OF 122 DAYS PRESIDING AT DEPOSITION INVOLVING 15 WITNESSES WHOSE TESTIMONY RAN TO

3,360 PAGES. TAKE HEART. INGERSOLL

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